

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

CLERK'S OFFICE, DISTRICT COURT
AT ROANOKE VA. - FILED

APR 29 2010

JOHN F. BOBBARAN, CLERK
BY: *[Signature]* DEPUTY CLERK

United States District Court		Eastern/Western (circle one) District of Virginia	
Name (under which you were convicted): <i>Scott M. Boger</i>		Docket or Case No.: <i>7:10-CV-00175</i>	
Place of Confinement: <i>Pocahontas State Correctional Center</i>		Prisoner No.: <i>1127139</i>	
Petitioner (include the name under which you were convicted) <i>Scott M. Boger</i>		Respondent (authorized person having custody of petitioner) <i>S.K. Young, Warden</i>	
The Attorney General of the State of Virginia			

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: The Prince William County Circuit Court imposed the sentence I am currently serving. However, I am seeking relief from a prison disciplinary conviction in which I lost good time.
 (b) Criminal docket or case number (if you know): CR 54408
2. (a) Date of the judgment of conviction (if you know): on or about 6/24/03
 (b) Date of sentencing: on or about 7/25/03
3. Length of sentence: 20 years with 10 years suspended
4. In this case, were you convicted on more than one count or of more than one crime? Yes ☐ No ☒
5. Identify all crimes of which you were convicted and sentenced in this case:
18.2-51.1 Malicious Wounding of a Police Officer
For my disciplinary conviction the offense was 119c of OP 861.1 for "Failure to participate in reentry planning."
6. (a) What was your plea? (Check one)

(1) Not guilty ☐
 (2) Guilty ☒

(3) Nolo contendere (no contest) ☐
 (4) Insanity plea ☐

* I pled not guilty to my disciplinary offense

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?
I pled not guilty to my prison disciplinary offense.

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☐ *N/A*

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☐ No ☐

*No at my criminal conviction
Yes at my prison disciplinary hearing.*

8. Did you appeal from the judgment of conviction?

Yes ☐ No ☐

*No to criminal conviction.
Yes to prison disciplinary conviction.*

9. If you did appeal, answer the following:

(a) Name of court:

(b) Docket or case number (if you know):

(c) Result:

(d) Date of result (if you know):

(e) Citation to the case (if you know):

(f) Grounds raised:

(g) Did you seek further review by a higher state court? Yes ☐ No ☐ *N/A for criminal conviction*

If yes, answer the following:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Result:

(4) Date of result (if you know):

(5) Citation to the case (if you know):

(6) Grounds raised:

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☐

If yes, answer the following: *N/A for criminal conviction*

(1) Docket or case number (if you know):

(2) Result: ---

(3) Date of result (if you know): ---

(4) Citation to the case (if you know): ---

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐ For my criminal conviction.

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: Prince William County Circuit Court
 (2) Docket or case number (if you know): ?
 (3) Date of filing (if you know): ?
 (4) Nature of the proceeding: Habeas
 (5) Grounds raised: Various 5th, 6th, and 14th Amendment violations.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: Dismissed / denied

(8) Date of result (if you know): ? Feb. 2005

(b) If you filed any second petition, application, or motion, give the same information:

- (1) Name of court: Prince William Circuit Court
 (2) Docket or case number (if you know): ?
 (3) Date of filing (if you know): Dec. 2006
 (4) Nature of the proceeding: 8.01 428 (D) MOTION
 (5) Grounds raised: Fraud by prosecutor

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: Dismissed / Denied

(8) Date of result (if you know): ?

(c) If you filed any third petition, application, or motion, give the same information: Not on criminal conviction

(1) Name of court: —

(2) Docket or case number (if you know): —

(3) Date of filing (if you know): —

(4) Nature of the proceeding: —

(5) Grounds raised: —

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: —

(8) Date of result (if you know): —

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☒ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

N/A

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts and law supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: See page 14 of MEMORANDUM IN SUPPORT for Claim (a) grounds and argument.

- (a) Supporting facts and law (State the specific facts and law that support your claim.):

- See above -

- (b) If you did not exhaust your state remedies on Ground One, explain why: _____

N/A

- (c) **Direct Appeal of Ground One:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

I appealed my disciplinary conviction to the last level Virginia DOC Appeals. All claims (a)-(h) were raised.

- (2) If you did not raise this issue in your direct appeal, explain why: _____

- (d) **Post-Conviction Proceedings:**

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

- (2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Habeas

Name and location of the court where the motion or petition was filed: _____

Virginia Supreme Court

Docket or case number (if you know): 092372
 Date of the court's decision: Feb. 16, 2010
 Result (attach a copy of the court's opinion or order, if available): Petition denied

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☒

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (d)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: Virginia Supreme Court has original jurisdiction of my

habeas. It is the highest court in Virginia so no appeal is
possible. I did file a petition to rehear.

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: I completed

the VDOC grievance process and disciplinary appeals
process to the furthest extent allowed by policy.

GROUND TWO: See page 18 of Memorandum IN SUPPORT
for Claim (b) grounds and argument.

(a) Supporting facts and law (State the specific facts and law that support your claim.):

- see above -

(b) If you did not exhaust your state remedies on Ground Two, explain why: N/A

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

I appealed my disciplinary conviction to the fullest extent allowed by VDOC.

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Habeas

Name and location of the court where the motion or petition was filed: _____

Virginia Supreme Court

Docket or case number (if you know): 092372

Date of the court's decision: Feb. 16, 2010

Result (attach a copy of the court's opinion or order, if available): Petition denied.

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☒

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒ N/A

(6) If your answer to Question (d)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: Virginia Supreme Court is highest state court. No appeal is possible. I did file a petition to rehear.

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: I completed the inmate grievance and disciplinary appeals process to the furthest extent allowed by VDOC

GROUND THREE: See page 20 of MEMORANDUM IN SUPPORT for Claim (c) grounds and argument.

- (a) Supporting facts and law (State the specific facts and law that support your claim.):

- see above -

- (b) If you did not exhaust your state remedies on Ground Three, explain why: N/A

- (c) **Direct Appeal of Ground Three:**

- (1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No I appealed my disciplinary conviction to the fullest extent allowed by VDOC. Claims (a)-(h) were raised.
- (2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Habeas

Name and location of the court where the motion or petition was filed: _____

Virginia Supreme Court

Docket or case number (if you know): 692372

Date of the court's decision: Feb. 16, 2010

Result (attach a copy of the court's opinion or order, if available): Petition denied.

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☒

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (d)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: Virginia Supreme Court is highest state court. No appeal is possible. I did file a petition to rehear.

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: I completed the inmate grievance and disciplinary appeals process to the fullest extent allowed by VDOC.

GROUND FOUR: See page 23 of MEMORANDUM IN SUPPORT for Claim (d) grounds and argument.

(a) Supporting facts and law (State the specific facts and law that support your claim.):

- see above -

(b) If you did not exhaust your state remedies on Ground Four, explain why: N/A

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

I appealed my disciplinary conviction to the fullest extent allowed by VDOC. Claims (a)-(h) were raised.

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Habeas

Name and location of the court where the motion or petition was filed:

Virginia Supreme Court

Docket or case number (if you know): 092372

Date of the court's decision: Feb. 16, 2010

Result (attach a copy of the court's opinion or order, if available): Petition denied.

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☒

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? N/A

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: The Virginia Supreme Court is the highest state court. No appeal is possible. I did file a petition to rehear.

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: I

completed the inmate grievance and disciplinary appeals process for Claims (a)-(h) to the fullest extent allowed by VDOC

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: N/A

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: N/A

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☐

I have not filed any type of petition previously in regards to my prison disciplinary conviction in federal court.

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: N/A

(b) At arraignment and plea: N/A

(c) At trial: N/A

(d) At sentencing: N/A

(e) On appeal: N/A

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐ N/A

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition. The occurrence that gives rise to this petition did not happen until 8/25/09

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: See conclusion
in MEMORANDUM IN SUPPORT. (To have good time
restored.)

or any other relief to which petitioner may be entitled.



Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on

4/27/10

(month, date, year).

Executed (signed) on 4/26/10 (date).



Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is
not signing this petition. N/A

Scott M. Boger 1127139
Pocahontas State Correctional Center
P.O. Box 518
Pocahontas, VA 24635
(276) 945-9173

4/26/2010

Clerk's Office
Federal District Court - Roanoke
P.O. Box 1234
Roanoke, VA

Dear Clerk,

Please find enclosed for filing, in two (2) separate mailings, 3 copies of my petition for writ of habeas corpus and 3 copies of the form the court provides that I filled out by hand.

I would like the Court to be aware that my habeas petition is in regards to a prison discipline hearing in which I lost 90 days of already earned good time and which therefore has lengthened the duration of my confinement.

I have sent the \$5 filing fee in another separate letter. Please provisionally file all documents and advise me of any problems, which I will attempt to correct immediately.

Sincerely,



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Scott M. Boger 1127139
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